

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

FRED A. & DIANA)	
JOHNSON,)	DOCKET NO.: PT-1997-5
Appellants,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal came on regularly for hearing on the 9th day of December, 1998, in the City of Great Falls, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law. The taxpayers, represented by Fred Johnson, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by appraiser Therese Williams, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Lot 9,10,11, & E1/2 Lot 12, & Lots 15 thru 19,
Block 20, Finley Supplement to Prospect Park, and
the improvements thereon, Cascade County, Montana.
Assessor number 2025300.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$7,171 for lots 15 thru 19, \$5,128 for lots 9 thru E1/2 lot 12 and \$58,529 for the improvements on lots 15 thru 19 and \$14,580 for the improvements on lots 9 thru E1/2 of lot 12. The DOR total land value is \$12,299 and the DOR total improvement value is \$73,109.

4. The taxpayer appealed to the Cascade County Tax Appeal Board requesting a reduction in value to \$8,000 for the land and \$50,000 for the improvements.

5. The County Board denied the appeal.

6. The taxpayer then appealed that decision to this Board.

7. The subject property is outside the city limits of Great Falls, Montana.

TAXPAYER'S CONTENTIONS

Mr. Johnson testified that the reason for this appeal is his opinion that the subject property has been devalued due to the fact that his neighbors have two house's on the same lots which do not conform with county regulations. He contended further that the regulations are being overlooked by the local authorities. Mr. Johnson described the neighborhood as a "mess".

The taxpayer introduced a copy of a plat map of the area where the subject property is located.(Ex 1) He testified that the concentration of buildings as indicated on exhibit show that there has been too much development allowed on the neighboring parcels.

Mr. Johnson introduced a copy of a letter from the City-County Planning Board to the neighboring land owner, concerning their response to him about a complaint filed by Mr. Johnson. (Ex 2) He also introduced copy of a letter from the County Surveyor to the City-County Health Dept. addressing Mr. Johnson's complaint about septic effluent.(Ex 3) He expressed concern about the impact of too heavy a concentration of buildings and septic systems on his water well.

The taxpayer stated that he has also been in contact with the County Attorney office to force the removal of some of the neighboring improvements. He argued that since he has had

no success in any of these attempts, his property has been devalued. It is his contention that you cannot value the subject property using a market comparison of other properties, because those properties are not impacted in the same way his is by these non-conforming neighboring properties. He is concerned that if these people are allowed to "get away" with these non-conforming uses, then someone else will do the same thing.

The taxpayer stated that because the foundation under his home is partly concrete and partly rock, the home has experienced some settling. He stated that he has taken care of the depreciation problems and does maintain the property. His requested value is not one that he obtained from either real estate brokers or a fee appraiser.

He testified that the neighboring area he is complaining about was formerly used as a mobile home court. At that time there was several septic systems at that location.

When the area was no longer used as a mobile home court, the neighbors started developing other types of buildings on those lots.

DOR CONTENTIONS

Ms. Williams introduced copies of the property record cards and the Montana comparable sheet for the subject

property. (Ex A) She presented a map indicating the location of the subject property and the location of the comparables found on exhibit A.(Ex B) She also presented a copy of photographs of the subject improvements and the surrounding area.(Ex C) The DOR introduced a copy of the zoning regulations (Ex D), and the land valuation model for the neighborhood designated 009 (Ex E).

The physical characteristics of the subject property were explained and discussed by the parties for the completeness and accuracy. Ms. Williams explained the Condition Desirability and Utility (CDU) rating for the subject property as fair.

The land value is determined from sales of vacant land parcels from within the area. Ms. Williams stated that she was not the appraiser who developed the land pricing and could not address how some of the rates or base sizes were determined. The subject land is valued at .46 per square foot.

BOARD'S DISCUSSION

The representative of the DOR stated that she has contacted the County Health Department and was told that the situation of the septic effluent has been tested by that department and there was no indication of a health hazard. Taxpayer exhibit 2 does indicate that a possible zoning or use

violation exists which apparently has not been resolved.

The taxpayer has multiple buildings on this property as well. There are three garages and one house that he has built there.

Mr. Johnson understood that the costs of the construction of the various buildings is not what they may be worth on the market. He testified that his sons had done much of the construction and that kept the costs down.

A review of the exhibits, particularly exhibit A indicates that if the cost approach to value had been adopted by the DOR the value indication is \$67,741. The market approach value, which is as adopted by the DOR at \$65,700, is the lower indication of value from these two approaches to value. Mr. Johnson was in agreement on the physical characteristics of the property and agreed with the comparable property selection as provided by the DOR. His complaint arises not from within his property but is based on happenings on adjacent property over which he has no control. If there was a market indication demonstrated that would lead this Board to factual market value reduction it would be easy to override that value to the cost approach. To do so under the evidence in the record would in fact penalize the taxpayer because the value would go up.

It is the opinion of this Board that based on the

evidence and testimony in the record the taxpayer failed to present sufficient evidence to support the claim that the local board decision is in error, and that this appeal be denied.

CONCLUSIONS OF LAW

1. **15-8-111. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Cascade County by the assessor of that county at the 1997 tax year value of \$12,299 for the land and \$73,109 for the improvements as determined by the Department of Revenue.

Dated this 4th day of February, 1999.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.